

### **REMARKS**

The Office action dated February 7, 2008 , and the references cited have been fully considered. In response, please enter the amendments and consider the remarks presented herein. Reconsideration and/or further prosecution of the application is respectfully requested.

Applicants appreciate the thoughtful examination of the application. Applicants also appreciate the Office returning the initialed, signed and dated 1449's indicating their full consideration of the submitted references.

First, Applicants have taken this opportunity to amend independent claims 6 and 27 to recite that the computer-readable medium is a tangible computer-readable medium in accordance with the holding of *In re Nuijten*, No. 2006-1371, slip op. (Fed. Cir. 2007). Additionally, claims 1, 3, 6, 8 11, and 13 are amended to recite the use of the "activity measurement value" instead of the "measure of activity" to be consistent with the limitation with of "maintaining an activity measurement value based on a measure of activity."

In regards to the claim rejections, all claims stand rejected under 35 USC § 102(e) as being anticipated by Carter et al., US Patent 7,161,902. Applicants do not believe that Carter et al. teaches each and every claim limitation of any pending nor original claim. But as Applicants are willing to work with the Office in order to alleviate concerns of the Office that a claim might read on prior art and to drive the prosecution of the application to issuance, Applicants have amended each of the independent claims to recite a definition of the fix-up adjustment value rather than simply arguing semantics of the claim language. Support for such amendments is provided at least by the first paragraph on page 13 of the original disclosure.

More specifically, independent claims 1, 6 and 11 recite "wherein the fix-up adjustment value is a predetermined value for correcting a deviation from the desired rate based on a lack of precision error induced by said use of the approximated inverse rate in maintaining the rate control value;" and independent claims 16, 21 and 27 recite "wherein the fix-up adjustment value is a predetermined value for correcting a deviation from the desired rate based on a lack of precision error induced by said use of the approximated inverse rate in said scheduling of

packets." Carter et al. is directed at determining an autocorrelation function from sampling traffic egressing from an output buffer and determining whether an increase or decrease in the buffer output rate would result in a decrease in the congestion parameter, and then adjusting the buffer accordingly. Carter et al. neither teaches nor suggests the fix-up adjustment value and its use as recited in each of the pending independent claims. For at least these reasons, the prior art of record neither teaches nor suggests all of the limitations of any pending claims, and Applicants respectfully request all claim rejections be withdrawn, and all claims be allowed.

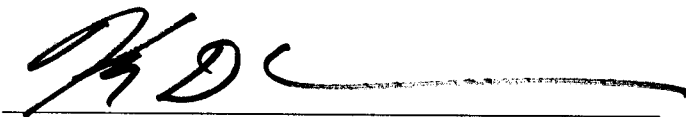
**Final Remarks.** In view of the above remarks and for at least the reasons presented herein, all pending claims are believed to be allowable over all prior art of record, the application is considered in good and proper form for allowance, and the Office is respectfully requested to issue a timely Notice of allowance in this case. Applicant requests any and all rejections and/or objections be withdrawn. If, in the opinion of the Office, a telephone conference would expedite the prosecution of the subject application, the Office is invited to call the undersigned attorney, as Applicants are open to discussing, considering, and resolving issues.

Applicants request a two-month extension of time is required. Should a different extension of time be deemed appropriate, Applicants hereby petition for such deemed extension of time. Applicants further authorize the charging of Deposit Account No. 501430 for any fees that may be due in connection with this paper (e.g., claim fees, extension of time fees) as required in addition to the payment made herewith using EFS-Web.

Respectfully submitted,  
**The Law Office of Kirk D. Williams**

Date: July 7, 2008

By



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